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Title: GUIDELINES FOR THE USE OF TIME-RELATED CONTRACT PROVISION			
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SUPERSEDED ISSUANCES

This EI supersedes EI 85-35 and EI 86-33, INCENTIVE/DISINCENTIVE CLAUSES.

EFFECTIVE DATE

This EI is effective immediately.

BACKGROUND

An increase in the number of infrastructure repair contracts in the Department's construction program, coupled with increasing traffic volumes has created the need for new ways to mitigate the impacts of construction on the public. A + B bidding, incentive/disincentive specifications, and lane rental type provisions are intended to encourage Contractors to more actively manage their work schedule and, when necessary, to adopt innovative and aggressive scheduling and construction management processes that will shorten the construction duration and reduce inconvenience to the public.

PURPOSE

The purpose of this EI is to transmit the attached guidance on the time element of construction and the use of time-related contract provisions. Guidance is provided in the following two areas:

Standard Specification Time-Related Contract Provisions

- Start and completion of work
- Estimating contract time
- Engineering and Inspection charges
- Liquidated damages
- Interim milestone dates with liquidated damages,

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Special Time-Related Contract Provisions

- A+B bidding,
- Incentive/disincentive provisions,
- Lane rental

Time-related contract provisions provide a way for the Department to establish time-related expectations and goals for the Contractor's construction activities and/or the speed of the construction operations. Each of these provisions has its own unique application and will be discussed separately.

This EI supersedes all previously issued interim guidance on A+B and Lane Rental. These guidelines supplement guidelines provided in Chapter 16 of the Highway Design Manual, MAINTENANCE OF TRAFFIC DURING CONSTRUCTION, EI 91-01, METHOD OF TRAFFIC MAINTENANCE DURING CONSTRUCTION and EI 96-027, NIGHTTIME CONSTRUCTION.

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GUIDELINES FOR THE USE OF TIME-RELATED CONTRACT PROVISIONS

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December 1, 1999

GUIDELINES FOR THE USE OF TIME- RELATED CONTRACT PROVISIONS

These guidelines supplement guidelines provided in Chapter 16 of the Highway Design Manual, MAINTENANCE OF TRAFFIC DURING CONSTRUCTION, EI 91-01, METHOD OF TRAFFIC MAINTENANCE DURING CONSTRUCTION and EI 96-027, NIGHTTIME CONSTRUCTION, and supersedes EI 85-35 and EI 86-33, INCENTIVE/DISINCENTIVE CLAUSES.

I. GENERAL

NYSDOT policy initiatives have been established to emphasize the need to assess traffic impacts due to construction, and develop and implement ways to minimize those impacts, such as:

- Mandatory phased construction
- Temporary roadways and bridges
- Off-site detours
- Work hour restrictions, i.e., off-peak hours, nighttime, weekends
- Lane closure restrictions
- Special scheduling provisions

An increase in the number of infrastructure repair contracts in the Department's construction program, coupled with increasing traffic volumes has created the need for new ways to mitigate the impacts of construction on the public. A+B bidding, incentive/disincentive specifications, and lane rental type provisions are intended to encourage Contractors to more actively manage their work schedule and, when necessary, to adopt innovative and aggressive scheduling and construction management processes that will shorten the construction duration and reduce inconvenience to the public.

The purpose of this EI is to provide guidance on the time element of construction and the use of time-related contract provisions. Guidance will be provided in the following two areas:

Standard Specification Time-Related Contract Provisions

- Start and completion of work
- Estimating contract time
- Engineering and Inspection charges
- Liquidated damages
- Interim milestone dates with liquidated damages,

Special Time-Related Contract Provisions

- A+B bidding,

- Incentive/disincentive provisions,
- Lane rental

Time-related contract provisions provide a way for the Department to establish time-related expectations and goals for the Contractor's construction activities and/or the speed of the construction operations. Each of these provisions has its own unique application and will be discussed separately.

II. STANDARD SPECIFICATION TIME-RELATED CONTRACT PROVISIONS

A. Start and Completion of Work

All projects include the standard specification requirements regarding starting and completing the work. Contractors are required to begin work within 10 days of the effective date of the Agreement, unless the consent of the Department is given in writing to begin at a later date, and complete all work by the contract completion date. Section 108-PROSECUTION AND PROGRESS of the Specifications, contains requirements for project scheduling, assessment of liquidated damages and/or engineering charges for failure to complete the contract on time, and conditions for extending the completion date. Changed condition clauses also allow for adjusting time requirements.

B. Estimating Contract Time

The basis for all time-related contract provisions is NYSDOT's estimate of the time to complete the project. The timing of the letting and award, and the relationship to seasonal weather, or other restrictions, must be considered when establishing time periods for the completion of work. Restriction on lane closures, work hours, and the use of overtime, and the time required to fabricate and deliver material, etc., also affect when a project can be completed. Additionally, Utility, Railroad and/or other third party work needs to be addressed.

The amount of time specified to complete a project or project phase may have an impact on cost and other factors. If contract time is too short, bid prices may be higher, quality and safety requirements may be more difficult to enforce, and time-related disputes or claims may increase. Some contractors may be eliminated for lack of insufficient resources and equipment, or resources from one contract may be diverted to another at the expense of the first contract. On the other hand, contractors may be more likely to look for innovative ways to complete the project on time, resulting in increased productivity rates.

If the contract time is too long, the public may be subject to additional user-delay costs, businesses may be affected, and costs for inspection may increase due to lower Contractor productivity. Contractors may also bid more work than they can handle and would not be under sufficient pressure to develop innovative ways to expedite the work.

The goal of the Designer is to attempt to recognize these factors and obtain an appropriate balance among the tradeoffs. A reasonable contract time would be based on a highly qualified contractor working a regular 8 hour day 5 day week schedule and would balance project and inspection cost, quality, safety and user costs. The schedule for most NYSDOT projects should be based on this average condition. In fact, the Standard Specification, Section 110-03, OVERTIME DISPENSATION REQUIREMENTS FOR NON-FEDERALLY AIDED CONTRACTS, requires the Contractor to base the bid on working a normal work schedule.

For critical projects or project phases where traffic inconvenience and delays are to be held to a minimum, A+B bidding or I/D provisions should be used to accelerate the construction duration. Contract time estimates for these accelerated projects should be based on a highly qualified contractor working extended or extra shifts with additional workers for six or seven days a week. Refer to the discussion on time determination in Section III for additional guidance related to accelerated schedules..

It is beyond the scope of this guideline to provide instruction for estimating contract time. Formal guidelines are currently being developed and will be issued in a subsequent instruction. A good reference on this subject is NCHRP Synthesis 215, *Determination of Contract Time for Highway Construction Projects*.

C. Engineering and Inspection Charges

When the contract completion date is not met, the additional cost for construction inspection and engineering may be charged to the contractor. Section 108-04 of the Standard Specifications informs the Contractor that such charges may be incurred. The method used by NYSDOT to assess these charges is by force account procedures, i.e., the Contractor is charged the actual incurred engineering and inspection costs. Procedures used for calculating these amounts are contained in Section 108 of the Contract Administration Manual, MURK Part 1A.

D. Liquidated Damages

Liquidated damages (LD) provisions are intended to recover costs to the general public and the Department associated with the Contractor's failure to complete the project on time. These provisions are developed in accordance with FAPG 23 CFR Sec. 635.127, AGREEMENT PROVISIONS REGARDING OVERRUNS IN CONTRACT TIME. Federal guidelines require that LD amounts, as a minimum, shall recover the estimated additional engineering and inspection costs. However, since these costs are handled separately for NYSDOT contracts, they are not calculated and included in the liquidated damages amount.

Construction time periods associated with LD provisions should be based on average conditions as discussed in B. above, i.e., an highly qualified contractor working regular hours.

If a project or project phase must be completed at an accelerated schedule, A+B bidding or an I/D provision should be used. Setting a tight completion date and assessing LD's if they don't finish on time is a negative approach to acceleration. A tight but achievable schedule with an incentive for early completion is a more positive approach and has proven to be more effective.

Liquidated Damages are not intended as a penalty, and the word "penalty" shall not be used in any special notes associated with LD amounts.

There are two ways to determine LD amounts for construction contracts.

- Section 108-03 FAILURE TO COMPLETE WORK ON TIME of the Standard Specifications, provides a Schedule of Liquidated Damages by contract size. The rates contained in that table include average LD amounts and are appropriate for most projects. This table was developed as an alternative to calculating LD amounts on a project to project basis.
- For projects greater than \$10 million, and for projects where the LD amounts from Section 108-03 do not represent the potential damages associated with not completing a project on time, the Designer must calculate LD amounts in accordance with the following guidelines and include the appropriate amount in a special note in the contract.

Calculating LD Amounts

Liquidated damages amounts may include the following:

- Road user costs which include time costs associated with driver delay, accident cost based on an estimated accident rate during construction, and vehicle operating costs associated with delay. When calculating road user costs the appropriate traffic volumes must be used. For example, if lanes can only be closed at night, nighttime traffic volumes must be used to determine the LD amounts. LD amounts associated with road user cost can be calculated using the current version of NYSDOT's Highway User Cost Accounting Micro-Computer Package (HUCCA) issued by the Planning and Strategy Group. (When using HUCCA to calculate costs for analysis and comparison of M&PT alternatives, a reduction of the amount calculated is applied in accordance with EI 91-01. When using HUCCA to calculate LD amounts, 100% of the cost amount calculated may be used.)
- The cost of State related traffic control such as dedicated police services agreements can be added to completion date LD amounts, if police services are required for the whole contract duration. If they are required for a particular phase of construction, they can be added to any interim milestone LD amounts. LD amounts associated with dedicated police agreements can be estimated in accordance with EI 93-30,

DEDICATED POLICE SERVICES ON DEPARTMENT CONSTRUCTION PROJECTS.

- Maintenance costs related to winter shutdowns, maintaining detours, etc. LD amounts associated with maintenance should be estimated on a project by project basis with assistance from the Regional Maintenance Group.
- Temporary Easement/Occupancy costs associated with renting these areas may be included if they are required for the total contract duration. LD amounts associated with temporary easements/occupancies should be estimated on a project by project basis with assistance from the Regional Real Estate Group.
- Other direct costs to the Department not included elsewhere that can be estimated and documented.

Costs attributed to disruption of adjacent businesses shall not be included in LD amounts. The Department does not currently have a standard procedure to reasonably estimate the anticipated costs associated with disruption of adjacent businesses. The Designer may submit a project specific request to include these costs to the Design Quality Assurance Bureau. Such requests must include documentation to support the increase and must be submitted with sufficient lead time for FHWA or other reviews.

Liquidated damages amounts must be reasonable, based on rational cost analysis, and documented in the project records. It would be unfair to the Contractor if the amounts specified for LD are excessive and don't represent the true cost of failure to complete the work on time. Excessive and unjustifiable LD amounts would also be difficult to defend should the Department find itself in litigation with a Contractor.

When adjusting the Section 108-03 LD amount, the following wording should be included in a special note:

"Due to unique characteristics of this project, the amount of liquidated damages for this contract shall be \$_____ per calendar day and shall replace the amount shown in Standard Specification Section 108-03. All other requirements of Section 108-03 of the Standard Specifications shall remain in effect for this contract."

LD's may also be used to recover user delay costs associated with hourly lane closure requirements which can be included in special notes.

E. Interim Milestone Dates with Liquidated Damages

There are occasions when it is not necessary to complete a certain phase or phases early but the work must be completed on time (additional cost to accelerate is not warranted). If a contract contains one or more phases that must be done by a certain interim date(s), special

associated LD amounts should be identified for each phase. The LD amounts could be from Table 108-01 if appropriate, or they could be calculated for each phase.

EXAMPLE 1 - If a contract contains multiple work locations and the work is to be done in a certain order or within certain time frames, milestone dates should be specified with site specific LD amounts. This could be viewed as separate contracts by the same Contractor, each with its own start and completion date. When considering this type of note, be careful not to severely restrict the Contractor's operations such that their efficiency is reduced. This could escalate the cost. It may be more advantageous to allow a Contractor to work at multiple sites concurrently.

EXAMPLE 2 - If a contract contains a phase or phases that must be completed before an event that results in increased traffic, such as the State Fair, track season, vacation season, school season, etc., milestone dates with LD may be warranted. If the amount of time specified in the contract is reasonable and the traffic disruption is minimal before the event, there is really no need to expedite the work. When traffic increases as a result of these events the traffic disruption could then become intolerable. An LD amount that reflects the impact on the user will encourage the Contractor to finish on time without significantly increasing costs associated with expediting the work.

EXAMPLE 3 - A phase of a project is to be completed and open to traffic before winter. Additional costs for plowing snow, impact on safety, and any other costs must be considered when determining the LD amounts.

If an additional margin of safety is needed during any of these situations, the milestone date could be adjusted ahead slightly, or a modest incentive based on the calculated user delay cost may be included. Whether to use an LD or I/D clause requires some judgement by the Designer and depends on the nature of the problem. The Designer's estimate of the Contractor's schedule of operations must be considered when making such decisions. If the time period is tight, an incentive may be in order. If there is more than enough time to complete a phase and an incentive is offered, the Contractor would most likely get the maximum incentive with minimal additional effort.

III. SPECIAL TIME-RELATED CONTRACT PROVISIONS

In addition to the standard specification time-related contract provisions, the following are available, when applicable, and are added to a contract by special notes in the proposal.

- A+B Bidding
- Incentive / Disincentive (I/D) provisions.
- Lane Rental.

These types of provisions are used to either accelerate a project or project phase, or in the case of lane rental, to encourage better use of time during lane closure conditions. One or

more of these provisions may be included in a contract.

In discussing I/D provisions, a clear distinction needs to be made between the intent of I/D provisions and the purpose of liquidated damages. Although they have similar mechanisms, the function of each is different. The primary function of LD is to recover costs associated with the Contractor's failure to complete the project on time. On the other hand, an I/D provision is intended to motivate the Contractor to complete the work on, or ahead of, schedule. An I/D provision for early completion is defined as a contract provision which compensates the Contractor for each day that identified critical work is completed ahead of schedule and assesses a deduction for each day that completion of the critical work is delayed. Its use is primarily intended for those critical projects where traffic inconvenience and delays must be held to a minimum.

There are two ways to introduce an I/D provision into a contract.

- By A+B bidding
- By an I/D special note, (Standard I/D)

A. A+B Bidding

The Department first introduced A+B Bidding on a trial basis in 1994. A+B bidding is a method of awarding a project based on both cost and time. Each bid submitted consists of two parts:

- The A portion of the bid is the sum bid for the contract work items.
- The B portion of the bid is the time in calendar days proposed by the bidder to complete the project or a portion of the project, multiplied by a daily road user cost determined by the Department.

The contract is awarded based on the sum of the A portion and the B portion of the bid. The contract amount after award is limited to the A portion of the bid.

A disincentive provision is incorporated into the contract (based on road user costs) should the Contractor fail to complete the work in the length of time bid. An incentive provision is also included to pay for acceleration costs and to reward the Contractor for earlier completion.

The following attachments explain how the A+B method of bidding works and how payments or deductions are made.

- Special Note: Provisions for A+B Bidding
- Specification, Item No. 91698.93M INCENTIVE PAYMENTS AND DISINCENTIVE ASSESSMENTS FOR B PORTION WORK.

Experience has shown that A+B bidding is an effective way to reduce construction induced congestion and delays by allowing the cost of work and time to be balanced through the open competitive bidding process. Benefits of A+B include:

- encourages potential Contractors to develop even more detailed well thought out plans in order to bid on the time to complete a project or project phase. Since the time bid by each Contractor is based on their own capabilities to perform the work, the more efficient Contractors can generally bid shorter times.
- encourages Contractors to schedule their operations to maximize the efficiency of their work crews and equipment in order to meet the time bid.
- encourages Contractors to work overtime, double shifts and at night to reduce construction time.
- encourages Contractors to develop innovative ways to reduce construction duration at the lowest cost during bid preparation and during construction.
- road user costs and inconvenience are minimized.
- reduces the number of congestion related complaints from the road users and local communities.
- congestion related pollution and environmental impacts are reduced.

Guidelines for Developing A+B Provisions

Some of the guidance below is based on guidelines for the development and use of I/D provisions, contained in FHWA Technical Advisory T 50180.10 titled Incentive/Disincentive for Early Completion, dated February 8, 1989.

1. Project Selection

The use of A+B provisions is primarily intended for critical projects or project phases where traffic inconvenience and delays must be held to a minimum. User delay costs or public benefit must be significant enough to warrant construction acceleration. If NYSDOT staff and the Contractors staff are working double shifts and/or overtime to complete a project or phase and there is no apparent user delay or reason to expedite the work, Contractors, NYSDOT staff, and the public, may question why they are rushing to finish. This is not cost effective or good for morale. It must be emphasized that A+B provisions should not be used routinely. Generally, the use of these provisions should be limited to those projects or project phases that would severely disrupt highway traffic. As a guide, user delay and other documented delay costs should be at least \$3,000 per day to warrant the use of incentive provisions.

The following characteristics are associated with projects appropriate for A+B bidding:

- high traffic volume facilities generally found in urban areas,
- projects that will complete a gap in a significant highway system,
- major reconstruction or rehabilitation on an existing facility that will severely disrupt traffic,
- major bridges out of service,
- projects with lengthy detours of high volumes of traffic,
- projects which have preconstruction level of D or worse, and
- projects with high accident locations (included in the PIL list) which may be exacerbated by non standard features during construction.

A+B bidding may be used for projects or phases which produce user delay costs less than \$3,000/day if extraordinary concerns exist such as interference with public events or significant public interest and benefit. However, the reasons must be documented, approved by the Regional Director, and made a part of the project records.

When selecting projects for A+B bidding, the total B portion of the bid must be an amount large enough to influence the bidding. If a very large project has a very short B portion completion time, the time element may have little impact on the overall results of the bidding. For example, a \$30,000 B portion (10 days X \$3,000/day) would have minimal effect on a \$20 million project (A portion) due to its small percentage of the total A+B bid. On the other hand, a \$1,250,000 B portion (250 days X \$5,000/day) on a \$5 million project (A portion) would provide a significant incentive to a Contractor to reduce the number of days bid because the B portion, as a percent of the total A+B bid, is significant.

2. Project Development

It is essential that a project's suitability for A+B bidding be identified during the early stages of project development. This allows for full deployment of resources needed to properly design and coordinate the project. During the development of A+B projects, extra effort should be made to ensure that the design, specifications, schedule, etc., are compatible and appropriate for the project. A field change to correct mistakes in plans can be very costly in both time and money on an A+B project. The plans and specifications should indicate any unusual conditions or restrictions the Contractor may be required to work under, such as prohibiting jack hammering, pile driving or heavy equipment operation during the night due to noise problems.

During the preconstruction phase of the project, all affected parties (e.g., local officials, police, Regional functional groups, businesses, schools, utility companies, railroads, etc.) should be involved in the project development. It is essential that designers work closely with the Regional Construction Group regarding schedules, wording of special notes, etc.

Pre-design field reviews are essential since "as built" plans or old construction plans may not be reliable, due to maintenance operations or field changes not recorded on the plans. Also, a pre-bid meeting may be necessary to discuss the I/D phase and any unusual features of the project with prospective bidders.

a. Special Note: Description of B Portion Work

The contract must clearly define what constitutes the start and the completion of the B portion work. Both may differ from the start or completion of the project. For example, the B time might not begin until a detour is implemented, a bridge closed or traffic is otherwise impacted. This allows the Contractor time to fabricate and deliver steel, obtain mix design approval, do other pre-construction planning, etc. However, it is necessary to define in detail what is expected of the Contractor. This can be done through the plans and by detailed description in the special provisions. Work to be completed must be clearly stated. Completion of items such as paving up to, and including, top course, signing, lighting, signals, striping, curb, shoulder, etc., should be addressed. Off-road items such as landscaping, sidewalks or other items that could be performed without disrupting traffic should also be addressed. If the intent is to get the roadway open to traffic as soon as possible, off-road items may be excluded from the B portion work.

Counting days for the B portion work can begin with the lane closure or event that results in user delay, or with the award notification, or with a combination thereof.

a.1 Begin B portion work with lane closure or event that results in user delay

Under this condition, B portion work begins with an event such as closing a bridge or the first lane closure(s) and ends with an event, i.e., when the bridge is reopened or all work requiring lane closures is complete.

This is the preferred method of starting the B portion work if the goal is to minimize user delay associated with a certain situation. The Contractor should be allowed the flexibility to prepare for the lane closure period and select a start date that will result in the shortest period of time, within the overall time limits of the contract.

Bridge replacement projects with an off-site detour are ideally suited for this situation. The counting of B portion work days should start when the Contractor closes the bridge to traffic and end when the bridge is reopened to traffic. This encourages the Contractor to take care of all shop drawing submittals, ordering and delivery of materials, and other preparatory work such that the timing of the closure is based on the critical path of the actual construction. If the B portion work starts with the award notice, the Contractor may close the bridge earlier than necessary, resulting in additional user delay. One thing to consider in this situation is the amount of time that can be allowed before starting the B portion work. If the Contractor waits too long

before starting the work, the time bid may end after the contract completion date or some other milestone date. If the B portion work must be complete by a certain date, then the Contractor must be informed in the contract what the consequences are for not completing the work by that date. One option is to indicate in the special note that the disincentive period will begin on a certain date regardless of the time bid. In other words, if the Contractor fails to begin the work in time to complete by the milestone or contract completion date, all incentive payments must be forfeited.

a.2 Begin "B" portion work with award notification

In some cases, the goal is to achieve the B portion milestone date as soon as possible, by having the Contractor mobilize and begin working immediately. The starting point could then be tied to the notification of contract award, FORM CONR 349c or 350c, the Contractor's official notification that the contract has been signed by the Comptroller. A copy of the form, which is distributed by the Contract Management Bureau, and a description of the award process is contained in section 103-01 of the Contract Administration Manual. Standard wording in the special note for this situation could be:

"The counting of consecutive calendar days for the B portion work shall begin 10 calendar days after the date shown on the notification of contract award, CONR 349c or CONR 350c as applicable to the contract."

The 10 day period (or whatever number of days is appropriate) is not meant to be a day that any physical work begins; it is an agreed date to begin counting.

A sample description of B portion work using this method is shown as Exhibit B.

a.3 Begin "B" portion work with either an event that results in user delay or tied to award notification.

This option still gives the contractor the flexibility desirable in a.1 while also allowing the Department to demand the B portion work begin within a reasonable time period. Standard wording in the special note for this situation could be:

"The counting of consecutive calendar days for the B portion work shall start on the earlier of the following dates 1) 60 calendar days after the date shown on the notification of contract award, CONR 349c or CONR 350c as applicable to the contract, 2) when the Contractor first restricts traffic...."

Again the 60 day period (or whatever number of days appropriate) is not meant to be a day that any physical work begins; it is an agreed date to begin counting.

b. Multiple B Phases

Periodically, projects include multiple phases with varying degrees of user delay. Furthermore, projects may not be completed in one season, but the roadway must be fully open for the winter months.

For example, assume Phase 1 of a project is "pave westbound" and phase 2 is "pave eastbound", and the project is let early enough to allow the Contractor to complete both phases in one season. If the user delay is the same for each direction and we want both phases completed in one season, separate B portions may not be required.

If this same project is let late in the season and both phases are in the same B portion work and can not be done concurrently, some Contractors may bid one season, while others may bid 2 seasons. A Contractor that bids one season would have a significantly lower B portion bid because they are not including the winter months within their bid. The one season bid may require late season paving. If there are any significant increases in the B portion work during construction of Phase 1, the Contractor would most certainly request an extension of time which would result in the performance of Phase 2 in the second season.

The need for multiple B portions must be determined on a project-specific basis in consideration of the problems and objectives of the situation. All options must be considered when developing the description of the B portion work. A general guide is to tie the B portion work to the user delay. If there is no user delay during the winter, this period should not be included in the B portion work. If the user delay for westbound is different than eastbound, they should be separate B portions. If the roadway is closed or restricted during the winter with a measurable user impact, the winter should be included in the B portion time frame.

A sample description of B portion work using this method is shown as Exhibit C.

c. Utilities and Railroads

Utility, Railroad or other third party work within the B portion requires additional effort by designers and construction staff in order to minimize potential for delays. If possible, arrangements should be made to have this third party work done prior to the start of B portion work. If this is not possible, special notes must be included in the contract describing the time frames allowed for any Utility, Railroad or other third party agreement. It is essential that these time frames be consistent with the description of B portion work and the Designer's schedule. Conflicts between these third party schedules and the time specified for the B portion work must be avoided. Underground utilities within the B portion phase should be located with the highest possible degree of accuracy if there is contract work that could potentially interfere with these utilities. A quality level "A" rating for underground utilities should be achieved

during design and indicated on the contract plans. (Refer to EI 96-052, UNDERGROUND UTILITY LOCATION LABELING CONVENTION.)

d. Overtime Special Note for B Portion Work

A special note on overtime is required on all A+B projects so that all Contractors can prepare their bids based on the same information relative to overtime restrictions. Since the intent of the A+B bidding process is to minimize the duration of construction, the Contractor's work hours or the use of overtime **should not be** overly restricted. For most A+B projects, the Contractor should be allowed to work 60 hours per week per work shift, i.e., 5 - 12 hour days or 6 - 10 hour days.

If there are no reasons to restrict work hours or the use of overtime for a project, the Designer should include the Special Note Overtime for B Portion Work which includes the following statement:

"The application shall not request more than 60 hours per week per each work shift. The 60 hour weeks may be either 6 - 10 hour days or 5 - 12 hour days."

If there are reasons to restrict overtime to less than 60 hours per week, or if 6 day weeks should not be allowed, the reasons should be documented in the project records and the special note modified accordingly.

If there are reasons to exceed a 60 hour work week, the Designer must document the reasons and seek concurrence from the Regional Construction Engineer and the Construction Division. The Construction Division will contact the Department of Labor to ensure that the reasons to exceed a 60 hour work week are sufficient to obtain Department of Labor approval.

Keep in mind that the Contractor can work multiple straight time shifts on any project without the need for approval from the Department of Labor.

e. Special notes regarding time restrictions

If the contract contains work hour restrictions, milestone dates or other time restrictions, consideration must be given to the location of these requirements. Restrictions in various special notes, on different plan sheets, and in several specifications could lead to confusion. Consider combining time restrictions in a separate special note and appropriate cross references.

3. Determination of Incentive/Disincentive Amount

To be effective in accomplishing the objectives of I/D provisions, the I/D amount must be sufficient to encourage the Contractor to develop innovative ideas, and ensure the profitability

of meeting tight schedules. If the incentive payment is not sufficient to cover the Contractor's extra costs, then there is no incentive to accelerate production, and the I/D provisions will not produce the intended results.

- a. The daily I/D amounts must be developed in accordance with the same procedures used to calculate daily Liquidated Damages amounts. Refer to section II. C. 2. above. Engineering judgment may be used to adjust the calculated daily amount downward to a final daily I/D amount that provides a favorable benefit/cost ratio to the traveling public, and still motivates the Contractor. The daily I/D amount shall never be increased above the calculated amount.
- b. Incentive Cap - A cap on the amount of incentive paid under A+B provisions is required for budgeting and other fiscal reasons. The maximum number of days of incentive for each incentive period shall be limited to 10 % of the number of days estimated by the Engineer rounded to the nearest whole day. In addition, the sum of all incentives for a single contract shall be limited to 5% of the Engineer's estimated contract amount. Although this cap limits the number of days of incentive payment, keep in mind that the Contractor must bid on the time in order to get the project, and it is to their advantage to bid fewer days in order to be the lowest bidder. The daily cost disincentive will also encourage completion on or ahead of schedule.

4. B Portion Work Time Determination

When determining the maximum duration for the B portion time period, the Designer must consider to what extent, and at what cost, construction can be compressed from a normal construction schedule. Normal construction time is generally based on a highly qualified Contractor working five days a week, eight hours a day, while an accelerated time should be based on the performance of the same Contractor working extended or extra shifts with additional workers for six or seven days a week. However, the use of a continuous seven-day workweek is cautioned against, because extended periods of work without days off may result in reduced efficiency and morale, and high turnover rates for both Contractor and inspection personnel. The maximum duration for the B portion time period should be based on an accelerated but achievable work schedule. If the completion date is impossible to meet, the Contractor will not even try to earn the incentive. In fact, unreasonable completion dates may discourage potential bidders from bidding.

To accurately determine the B portion time period, Designers should develop a schedule, ideally using the critical path or some other quantitative method. This will ensure that the maximum duration specified is achievable, and that any other time related contract provisions are incorporated and consistent, i.e., utility schedule, railroad involvement, seasonal limitations, work restrictions, etc.

The season of the year in which the project will be constructed should also be considered in determining the B portion time.

5. Constructibility Review

On any project where the Designer intends to use A+B bidding, the Special Notes, supporting analyses, CPM schedule, and Maintenance and Protection of Traffic Plans must be developed and coordinated with the Regional Construction Group. A+B provisions should not be added at PS&E or by amendment. Refer to the current EI 99-013 CONSTRUCTABILITY REVIEW for further guidance.

6. Information Required With the PS&E Submission

a. Special Note, Provisions for A+B bidding (see Attachments)

Section I of the SPECIAL NOTE, FAILURE TO COMPLETE ALL WORK ON TIME, refers to the contract completion LD amount. This could be the standard table amount, or it could be adjusted to represent anticipated LD for the contract. Since all contracts include the standard provisions for completion date LDs, and LDs and Disincentives are based on the same costs, it is not acceptable to charge a Contractor for the same costs twice, i.e., LD and Disincentive amounts for user delay associated with the same operation cannot be charged to the Contractor. Since engineering and inspection costs are calculated separately, they should not be included in the I/D or LD cost calculations.

b. Special Note, Description of B portion Work (see Exhibits)

This special note must include the following information for each I/D phase:

- General description of work
- Starting date or event for the incentive period
- A clear definition of substantial completion for the I/D period. This should list what work is expected to be complete during the I/D period. The last event or operation to be complete must be clearly stated.
- Maximum number of whole days for the completion of the B portion work
- Maximum number of whole days for incentive payment
- The daily cost used for I/D

c. Item 91698.93M INCENTIVE PAYMENTS AND DISINCENTIVE ASSESSMENTS FOR B PORTION WORK (see Attachments)

The Engineer's estimate must include the appropriate amount for the maximum incentive for the contract. The maximum incentive equals 10% of the maximum number of days for the completion of the B portion work rounded to the nearest whole day multiplied by the daily cost. If a contract contains multiple B phases, the sum of all incentives must be included in the estimate.

- d. Special Note for Overtime Work (see Attachments)

The overtime special note, should be modified if necessary to meet project conditions. Regional Construction must be consulted regarding any required modifications to the overtime requirements.

- e. Special note or special specification for Critical Path Method Scheduling - Refer to EI 95-023 "CRITICAL PATH METHOD (CPM) SCHEDULING FOR DOT CONSTRUCTION PROJECTS"

B. STANDARD I/D PROVISIONS

Guidelines for the use of I/D provisions for NYSDOT projects were first issued in 1985. With the introduction of A+B bidding in the 1994, use of standard I/D provisions has declined although they do have limited applications. A special note titled "Incentive/Disincentive Clause" and a specification, Item No. 15698.9394M INCENTIVE PAYMENTS/DISINCENTIVE ASSESSMENTS FOR WORK SUBJECT TO THE SPECIAL NOTE "INCENTIVE/DISINCENTIVE CLAUSE", are attached.

Standard I/Ds provide a way to tell the Contractor how fast a project or project phase must be completed based on the Designer's assessment of how critical the phase or project is. The required duration and the associated cost to be paid are based on that assessment. All bids are based on the same I/D period. If a project or phase has marginal user delay and it is desirable to expedite it a little, the contract can contain a set duration and a maximum incentive.

The major differences between A+B and standard I/D contracts is that with Standard I/D provisions, NYSDOT determines the maximum duration to complete a project or project phase. When Contractors prepare their bids, they check whether they can complete the work in the specified time frames, and bid the cost to complete within the specified time frame.

Using A+B bidding, NYSDOT also determines the maximum duration to complete a project or project phase. However, when Contractors prepare their bids, they determine the time it will take to complete the project or project phase. They balance the cost of the project and the cost of time to get the project.

GUIDELINES FOR DEVELOPING STANDARD I/D PROVISIONS

The same guidelines used for developing A+B provisions (see Section III.A above) should be used when developing standard I/D provisions, however the following additional guidance is provided.

1. Project Selection

Below are some examples of where standard I/D provisions may be applicable.

a. Interim milestone dates with I/D.

There may be situations when the traffic disruption is limited in duration and marginal before an event such as the start of vacation season, i.e., user delay for one week before the event is \$1500 per day and after the event \$3000 per day. In this case, a limited incentive/disincentive provision may be desirable to expedite the work. The incentive would be set at \$1500 per day and the disincentive would be set at \$3000 per day. The key word here is marginal delay. If the delay is significant before the event, A+B bidding would be used.

b. I/D for contract coordination

If multiple contracts are let to complete a project, and all contracts should be completed at the same time, provisions must be included in each contract to control the speed of construction. If each contract were let as an independent A+B contract with the B portion work for the entire project, the likely result would be different completion dates for each contract. One solution would be to let the most critical or longest duration contract using A+B bidding to establish a completion date, and then let subsequent contracts with I/D or LD provisions based on that completion date, depending on how tight the schedules are.

c. I/D for fixed durations

The duration of some projects or project phases is fixed. Projects near schools sometimes include a window when work can be performed, i.e., during summer vacation. If this duration is 8 weeks long, and the work to be performed is estimated to take 6 weeks, there is no need to pay additional costs to expedite, unless the user delay is also significant during this period. If user delay is low during the construction period, an LD provision would be appropriate. The LD should be adjusted to reflect the impact of interrupting school traffic.

If the time estimated to perform the work is 8 weeks, assuming some overtime, and the user delay is low during the construction period, several alternate approaches may be considered:

- Tell the Contractor to complete the work in 8 weeks and charge LD if it is not.
- Use I/D with an 8 week maximum duration, offer an incentive to finish a week early.
- Use A+B with an 8 week maximum duration and risk getting a bid of 6 weeks at a higher A portion cost.

LD or I/D would be more appropriate in this case because it isn't necessary to expedite the work significantly in order to achieve the objective. If the schedule is tight and the user delay is high during construction, A+B bidding would be appropriate.

d. I/D for short durations

Other situations where I/D should be used instead of A+B are for phases with very short durations of a few days, such as weekend work. The effect of the B portion of the bid in determining the low bidder for a short duration on a large project is minuscule. Projects with multiple phases could use a combination of A+B and I/D. A+B could be used for the whole project or a long duration phase, I/D could be used for the shorter durations or less critical phases.

2. Determination of Incentive/Disincentive Amount

To be effective in accomplishing the objectives of I/D provisions, the I/D amount must be sufficient to encourage the Contractor to develop innovative ideas, and ensure the profitability of meeting tight schedules. If the incentive payment is not sufficient to cover the Contractor's extra costs, then there is no incentive to accelerate production, and the I/D provisions will not produce the intended results.

- a. The daily I/D amounts must be developed in accordance with the same procedures used to calculate daily LD amounts. Refer to Section II. C. 2. above. Engineering judgment may be used to adjust the calculated daily amount downward to a final daily I/D amount that provides a favorable benefit/cost ratio to the traveling public, and still motivate the Contractor.
- b. Incentive Cap - A cap on the amount of incentive paid under I/D provisions is required for budgeting and other fiscal reasons. The following guidelines shall be used for determining the maximum incentive.
 - The maximum number of days for incentive payment per I/D phase shall be limited to 30% of the Engineer's estimate of time for that phase, i.e., if the Engineer estimates that the maximum duration for an I/D phase is 100 days (based on an accelerated schedule) the maximum number of days for incentive payment shall be 30 days.
 - The sum of all incentives for a single contract shall be limited to 5% of the Engineer's estimated contract amount.

3. I/D Phase Time Determination

When determining the maximum duration for the I/D time period, the Designer must consider to what extent, and at what cost, construction can be compressed from a normal construction schedule. Normal construction time is generally based on a highly qualified Contractor working five days a week, eight hours a day, while an accelerated time should be based on the performance of the same Contractor working extended or extra shifts with additional workers for six or seven days a week. However, the use of a continuous seven-day workweek is cautioned against, because extended periods of work without days off may result in reduced efficiency and morale, and high turnover rates for both Contractor and inspection personnel. The maximum duration for the B portion time period should be based on an accelerated but achievable work schedule. If the completion date is impossible to meet, the Contractor will not even try to earn the incentive. In fact, unreasonable completion dates may discourage potential bidders from bidding.

To accurately determine the I/D time period, Designers should develop a schedule, ideally using the critical path or some other quantitative method. This will ensure that the maximum duration specified is achievable, and that any other time related contract provisions are incorporated and consistent, i.e., utility schedule, railroad involvement, seasonal limitations, work restrictions, etc.

The season of the year in which the project will be constructed should also be considered in determining the I/D time period.

4. Information required with the PS&E submission

a. Special Note - Incentive/Disincentive Clause (see Attachments)

Section E FAILURE TO COMPLETE ALL WORK ON TIME, refers to the contract completion LD amount. This could be the standard table amount or it could be adjusted to represent anticipated LD for the contract. Since all contracts include the standard provisions for completion date LDs, and LDs and Disincentives are based on the same costs, it is not acceptable to charge a Contractor for the same costs twice, i.e., LD and Disincentive amounts for user delay associated with the same operation can not be charged to the Contractor. Since the engineering and inspection costs are calculated separately, they should not be included in the I/D or LD cost calculations.

b. Special Note - Description of I/D Work (see Attachments)

The special note must include the following information for each I/D phase:

- General description of work
- Starting date or event for the incentive period
- A clear definition of substantial completion for the I/D period. This should list what work

is expected to be complete during the I/D period. The last event or operation to be complete must be clearly stated.

- Maximum number of days for the completion of the I/D work
 - Maximum number of days for incentive payment
 - The daily cost used for I/D
- c. Item 15698.9394M INCENTIVE PAYMENTS/DISINCENTIVE ASSESSMENTS FOR WORK SUBJECT TO THE SPECIAL NOTE "INCENTIVE DISINCENTIVE CLAUSE" (see Attachments)

The engineers estimate must include the appropriate amount for the maximum incentive for the contract.

- d. Special Note for Overtime Work (see attachments)

The Special Note for Overtime Work should be Modified if necessary to meet project requirements. Regional Construction must be consulted regarding any required modifications to the overtime requirements

- e. Special Note or Special Specification for Critical Path Method Scheduling

Refer to the current EI titled "CRITICAL PATH METHOD SCHEDULING FOR DOT CONSTRUCTION PROJECTS"

C. LANE RENTAL

Lane rental consists of charging the Contractor an hourly rental fee for occupying lanes and shoulders to do the contract work. Designers specify different rental rates for nighttime and daytime hours, peak hours and non-peak hours. This encourages the Contractor to work when lane rental rates are lower and also to be more productive when lanes are closed.

To implement lane rental, use the special note titled **PROVISIONS FOR LANE RENTAL** (see Attachments) the special note titled **DESCRIPTION OF LANE RENTAL WORK** (see Exhibits), and a Special Specification Item 15619.0195M Lane Rental Payments and Assessments-Hourly Basis (Lump Sum). These documents explain lane rental and how to make payments and assessments.

NYSDOT uses a bid item for lane rental costs. This eliminates the necessity for the Contractor to spread the cost of lane rental fees over other items of work. Similarly, to avoid negative cash flow to the Contractor, the rental fee collection is made against the amount bid for the lane rental item and only charges in excess of the total lump sum bid are made against moneys otherwise due the Contractor.

Lane rental can be used by itself or in conjunction with A+B Bidding or I/D provisions on the same project. If the intent is to shorten the total project duration, A+B bidding should be used. If the intent is to minimize traffic flow impacts, lane rental should be used. Both may be used on the same project for different phases or operations. Lane rental can not be charged for the same work being performed under an I/D or A+B provision since both are based on the same road user costs.

Lane rental is similar to A+B bidding in that the Contractor must estimate the time it will take to complete the work during bid preparation and then bid on the time.

- For A+B, the Contractor bids consecutive days x daily user cost = B portion of the bid.
- For Lane rental, the Contractor bids the sum of lane or shoulder closure hours x hourly user delay = bid for item 15619.0195M.

For A+B, once the Contractor starts the B portion work, it must be completed within the consecutive days bid. For lane rental, the Contractor can work one day a week on lane rental work if they choose, as long as the work is completed by the contract completion date ,i.e., if a lane is not closed, a rental fee is not charged.

GUIDELINES FOR DEVELOPING LANE RENTAL PROVISIONS

1. Project Selection

Lane rental is best suited for intermittent hourly lane or road closures when it is anticipated that lane closures will have a significant impact on traffic flow and road user delay. Typical operations include pavement joint repair, paving or operations that require short lane closures at multiple sites such as replacing overhead signs on high traffic roads.

Lane rental should not be used for long term permanent lane closures such as closing one lane on a bridge for 3 months.

2. Project Development

The description of work for which lane rental applies is critical to success. All variations of lane closures must be considered when writing the provision, and lane closure details should be shown on the plans. Designers should consider the number of lanes and/or shoulders to close, the length of each closure and the time periods when closures will be allowed. For example, Designers must consider if it is appropriate to charge a lane rental fee for a lane closure and not for a shoulder closure. Can work be performed on the shoulder without impacting traffic, or should the shoulder work be performed with the adjacent lane closed? What length lane or shoulder closure will be allowed? The description of lane rental work and the hourly charges are described in a special note in the proposal. An example of a completed

note is shown as Exhibit D.

Completion date estimates for lane rental projects must consider the hourly time restrictions placed on the Contractor to complete the work. If the Contractor is given a choice to work daily off-peak hours and nighttime hours in the contract, the contract completion date should not be set so tightly that the Contractor has to work every day and every night just to complete the work on time. If the intent is to do most of the work at night, sufficient time must be allowed. If the intention is for quick project completion, A+B bidding should be used instead.

3. Determination of Lane Rental amount

The hourly lane rental cost calculations must be performed in accordance with the same procedures used for A+B and I/D provisions. The only difference is that while the units of measure for A+B and I/D are days, the unit of measure for lane rental is hours. Both are based on road user delay or other associated and documented costs. Refer to section II. C above.

4. Information Required With the PS & E Submission

- a. A completed Special Note, Description of Lane Rental Work must be included, with an accurate description of the work subject to lane rental and criteria to judge when the work begins and ends - See Section D of the attached Special Note, Provisions for Lane Rental. The hourly rental charges must be included in special note. A sample special note "Description of Lane Rental Work" is attached as Exhibit D.
- b. Special Specification: Item 15619.0195M - Lane Rental Payments And Assessments-Hourly Basis (Lump Sum)
- c. An amount in the Engineer's Estimate for 15619.0195M. The amount should be based on the approximate time (hours) that the Designer estimates will be required for lane rental and the rental charge and the number and types of closures and/or obstructions - see Section D and E of the attached Special Provisions.
- d. Special Note, Overtime for Lane Rental Work. The overtime special note should be modified if necessary to meet project requirements. Regional Construction must be consulted regarding any required modifications to the overtime requirements.
- e. The need for CPM scheduling on all lane rental projects is questionable. If the lane rental period is short, the CPM need only apply to the lane rental period. This requirement can be added by a special note in the contract.

REFERENCES

EI 91-01, METHOD OF TRAFFIC MAINTENANCE DURING CONSTRUCTION
EI 96-027, NIGHTTIME CONSTRUCTION.
EI 96-052, UNDERGROUND UTILITY LOCATION LABELING CONVENTION
FAPG 23 CFR Sec. 635.127, AGREEMENT PROVISIONS REGARDING OVERRUNS IN CONTRACT TIME
Standard Specification Section 108 - PROSECUTION AND PROGRESS
Section 108 of the Contract Administration Manual, MURK Part 1A.
Standard Specification Section 110-03, OVERTIME DISPENSATION REQUIREMENTS FOR NON-FEDERALLY AIDED CONTRACTS
NCHRP Synthesis 215, Determination of Contract Time for Highway Construction Projects
FHWA Technical Advisory T 50180.10 titled Incentive/Disincentive for Early Completion

ATTACHMENTS

Special Note: Provisions for A+B Bidding.
Specification Item 91698.93M Incentive Payments/Disincentive Assessments for B Portion Work.
Special Note: Overtime for B Portion Work
Special Note: Incentive/Disincentive Clause
Specification Item 15698.9394M Incentive Payments/Disincentive Assessments for Work Subject to the Special Note "Incentive/Disincentive Clause".
Special Note: Overtime for I/D Work
Special Note: Provisions for Lane Rental.
Special Note: Description of Lane Rental Work
Specification Item 15619.0195M Lane Rental Payments and Assessments - Hourly Basis (Lump Sum).
Special Note: Overtime for Lane Rental Work

EXHIBITS

Exhibit A - Sample Special Note, Description of B Portion Work (Tied to an Event)
Exhibit B - Sample Special Note, Description of B Portion Work (Tied to Award Notification)
Exhibit C - Sample Special Note, Description of B Portion Work (Multiple B Portions)
Exhibit D - Sample Special Note, Description of Lane Rental Work

ATTACHMENTS

SPECIAL NOTE: PROVISIONS FOR A+B BIDDING

CONTRACT NO. D _____

A. MODIFICATIONS TO STANDARD SPECIFICATION PROVISIONS.

§102-03 is deleted and the following is substituted:

102-03 PROPOSAL SHALL SPECIFY GROSS SUM. Each proposal shall specify the correct gross sum for both A and B portions, in the manner hereafter described for which the work will be performed according to the plans and specifications and any amendment to the specifications if the same are issued prior to the date of receipt of the proposal, together with a unit price for each of the separate items as called for. The lowest bid shall be determined by the Commissioner on the basis of gross sum for which the entire work will be performed, arrived at by a correct computation of all items specified in the proposal therefore at the unit prices stated in the proposal (A portion), plus the total number of calendar days proposed by the bidder to complete the B portion of work to which A+B Bidding is applicable times the daily cost (B portion). The Commissioner of Transportation reserves the right to reject any proposal in which any of the bid prices are significantly unbalanced to the potential detriment of the Department. An unbalanced bid is considered to be one containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs which are anticipated for the performance of the items in question.

Any proposal shall be deemed informal which does not contain prices set opposite each of the several items for which there is a quantity exhibited in the itemized proposal or which shall in any manner fail to conform to the conditions of the published notice inviting proposals. The unit prices and gross sum bid shall be indicated in words and figures. In cases where the amount shown in words and its equivalent in figures do not agree, the written words may, at the discretion of the Commissioner of Transportation, be considered binding.

The bidder's attention is directed to the fact that they cannot exceed three (3) decimal positions in the cents column under unit bid price.

Some of the items may be designated as Fixed Price Items. When this is the case, the fixed prices are published in the proposal. They have been prepared taking into account the cost of all labor, materials, and equipment necessary to complete the work, including an allowance for overhead and profit. They can be identified in the Itemized Proposal by the words, "Fixed Price: See Specification and §102-03" appearing beneath the description of the item. In addition, the "Unit Bid Price" and "Amount Bid" columns and the "daily cost" contain preprinted entries in them. The bidder shall not change these entries. Should the amount shown be altered, the altered figures will be

disregarded and the preprinted price and amount will be used to determine the total amount bid for the contract.

Similarly, one or more items may be designated as MINIMUM PRICE ITEMS or MAXIMUM PRICE ITEMS. When this is the case, the minimum (or maximum) prices are published in the proposal. These items can also be identified in the Itemized Proposal by the words "Minimum Bid" or "Maximum Bid" appearing beneath the description of the item. The price bid for Minimum Price Items shall not be less than the minimum price shown in the Itemized Proposal, but it may exceed that price. Conversely, the price bid for Maximum Price Items shall be less than, or equal to, the maximum price shown in the Itemized Proposal. In the event a bid is less than the Minimum Price (or more than the Maximum Price) indicated in the Itemized Proposal, the Department will substitute the appropriate minimum (or maximum) price and make the necessary adjustments to determine the total amount bid.

§103-01 is deleted and the following is substituted:

103-01 AWARD OF CONTRACT. The award of contract will be made only to the lowest responsible bidder as determined under the Special Note "Provisions for A+B Bidding" and as will best promote the public interest as provided by §38 of the Highway Law. The New York State Department of Transportation reserves the right to reject any or all proposals, or, pursuant to §38 of the Highway Law, to award to other than the low bidder, to waive minor informalities, to advertise for new proposals, or to proceed to do the work otherwise, if, in its opinion, the best interest of the State will thereby be promoted.

If requested by the Department, the bidder must present evidence of ownership, corporate structure, ability and financial standing, as well as a statement as to equipment.

Under Section 103-04 Bonds, delete A. Faithful Performance Bond, and substitute the following:

A. Faithful Performance Bond. A bond in the form prescribed by the Commissioner with sufficient sureties, approved by said Commissioner, that the Contractor will perform the work in accordance with the terms of the contract and with the plans and specifications, and that it will commence and complete the work within the time prescribed in the contract, and that it will provide against direct or indirect damages that shall be suffered or claimed on account of such construction or improvement, during the time thereof, and until the contract is accepted. The bond shall be based on the A portion items only.

B. GENERAL.

The bidding for this project will take into account not only the amounts bid for each contract item (A portion) but also the Bidder's stated total number of calendar days times the appropriate daily cost (B portion) to substantially complete each specified phase, or stage of the project which is the subject of B portion work, or if so indicated, to open the facility, or a portion of the facility, to traffic in accordance with §107-13 of the Standard Specifications. The total bid will consist of the amount of awarded contract, which shall be known as the A portion of the bid, plus the sum of the products of the number of calendar days specified by the contractor for each phase, or stage of work subject to A+B Bidding times the daily cost for such phase, or stage as established by the Department. The sum of these products shall be known as the B portion of the bid.

The sum of A portion + B portion shall be used only in determining the lowest bidder. However, the days bid for each phase, or stage of the successful bid, and the amount specified as the daily cost by the Department for such phase, or stage shall be used to determine any incentive or disincentive payments relative to timely performance of the B portion work under contract.

C. B PORTION WORK.

The B portion work in this contract may be subdivided into one or more phases or stages. The phases or stages subject to A+B contracting, collectively, comprise the B portion work.

Each phase or stage of work subject to A+B contracting is described separately in the SPECIAL NOTE "DESCRIPTION OF B PORTION WORK" and each phase or stage of work subject to A+B contracting has its own:

- Maximum total number of calendar days that can be bid;
- Starting and ending dates or events;
- Daily cost;
- Maximum days for incentive determination, and
- Time frames and critical dates, if applicable.

D. DEFINITION OF TERMS.

For this project, the following additional definitions shall apply:

(a) Calendar Day - Every day shown on the calendar. (§ 101-06).

(b) Amount of the Awarded Contract - The correct or corrected total of the quantities shown in the bid proposal multiplied by the individual unit bid prices set forth in the

proposal by the bidder. (A portion of bid).

(c) Daily Cost - The amount which represents the average daily cost of interference and inconvenience to the highway and/or bridge user and the daily cost to the Department.

(d) Engineering Inspection Costs - The costs to the Department for inspection of the Contractor's work.

(e) Substantially complete - THIS DEFINITION SHALL APPLY TO ONLY B PORTION WORK. Each individual phase or stage of work subject to A+B Bidding shall be considered to be substantially complete when: 1) All work requiring lane or shoulder closures or obstruction to normal flow of traffic is completed; 2) Traffic is following the lane arrangement as shown on the plans for the finished roadway (or the specified phase(s) of work); and 3) All pavement construction, resurfacing, and traffic control devices shall be in their final position or as called for in the plans for the specified phase(s) of work.

E. PREPARATION OF PROPOSAL.

The bidder shall establish the number of consecutive calendar days to perform the B portion work for each phase or stage of work subject to A+B Bidding as specified in C above (B PORTION WORK).

The bid sheet for the B portion work provides space to individually list the number of consecutive calendar days for each stage or phase of work subject to A+B Bidding. The contractor shall enter the number of consecutive calendar days bid for each phase or stage of work subject to A+B Bidding individually in the space provided on the bid sheet. Bids showing time for completion of B portion work in excess of the maximum total number of calendar days that can be bid as specified in the SPECIAL NOTE "DESCRIPTION OF B PORTION WORK" will be adjusted by the Department to the maximum time allowed.

F. CONSIDERATION OF BIDS.

The submitted bid shall consist of two parts:

(A) The amount of awarded contract (A portion);

(B) The sum of the products of the number of consecutive calendar days bid for each phase or stage of work subject to A+B Bidding multiplied by their respective daily costs.

The sum of these products in (B) shall be the B portion of the bid. The sum of (A) +(B) shall be used only to determine the lowest bid for the project and shall not be used to

determine the amount of the awarded contract nor the final payment to the contractor when the project is completed, other than using the daily costs for any incentive/disincentive calculations based on performance of the B portion work for each individual phase or stage of work subject to A+B Bidding.

G. EARLY COMPLETION OF B PORTION WORK.

The Contractor will be paid the daily cost specified for each phase or stage of work subject to A+B Bidding for each calendar day the particular phase or stage of work is substantially completed before the number of calendar days stated by the contractor in its bid for that phase or stage of work. The total number of calendar days for incentive payment for each phase or stage of work subject to A+B Bidding shall not exceed the maximum number of days specified for incentive calculation in the SPECIAL NOTE "DESCRIPTION OF B PORTION WORK" for each phase or stage of work subject to A+B Bidding.

Incentive payments for early completion of the B portion of work will be made separately for each phase or stage of work subject to A+B Bidding. Incentive payments will be made under Item 91698.93M.

The Engineer shall be the sole authority in determining when the work subject to A+B Bidding is substantially complete.

H. FAILURE TO SUBSTANTIALLY COMPLETE THE B PORTION WORK IN THE TIME BID.

Failure to substantially complete any phase or stage of work subject to A+B Bidding within the number of consecutive calendar days bid for the particular phase or stage of work will result in the daily cost specified for that phase or stage of work in the SPECIAL NOTE "DESCRIPTION OF B PORTION WORK" being assessed for every calendar day in excess of the number of consecutive calendar days bid, up to the time when the particular phase or stage of work subject to A+B Bidding is substantially complete. **THERE IS NO LIMIT ON THE AMOUNT OF DISINCENTIVE ASSESSMENT.**

The assessments for failure to substantially complete the B portion of work will be made separately for each phase or stage of work subject to A+B Bidding. Disincentive will be collected under Item 91698.93M.

The Engineer shall be the sole authority in determining when the work subject to A+B Bidding is substantially complete.

I. FAILURE TO COMPLETE ALL WORK ON TIME.

CONDITION A

If the B-portion of work is substantially completed prior to the contract completion date stated in the proposal, for each calendar day that any work remains uncompleted after the contract completion date, the appropriate liquidated damages in accordance with § 108.03 will be deducted from any monies due to the Contractor. Engineering inspection costs may be added to the liquidated damages in accordance with § 108.03 and 108.04.

CONDITION B

If the B-portion of work is not substantially complete by the contract completion date, the daily cost for the B-portion of work will be assessed in accordance with H. FAILURE TO SUBSTANTIALLY COMPLETE THE B PORTION WORK IN THE TIME BID. In addition to the daily costs, engineering and inspection costs may also be assessed in accordance with §108.03 and §108.04. However, liquidated damages will not be assessed during the time the B-portion of work remains incomplete.

Following the substantial completion of the B-portion of work, if any other work remains incomplete, the appropriate liquidated damages will be deducted from any money due to the contractor in accordance with § 108.03 for each day any work remains incomplete after the substantial completion of the B-portion of work. Engineering inspection costs will also be assessed along with the liquidated damages in accordance with §108.03 and §108.04.

J. ADJUSTMENTS TO B PORTION WORK.

Adjustments to the B portion time period will be made based on the critical path method schedule submitted by the contractor in accordance with scheduling provisions found elsewhere in the contract documents. Delays due to extenuating circumstances beyond the control of the Contractor, as provided in section §108-04, will be considered when making time related adjustments. Adjustments will be separately made for each phase/stage of work subject to A+B Bidding.

91698.93M INCENTIVE PAYMENTS AND DISINCENTIVE ASSESSMENTS FOR B PORTION WORK

DESCRIPTION. There is no physical work to be accomplished under this item. This item will enable the Department to make incentive payments to (or disincentive assessments against) the Contractor for early substantial completion (or late completion) of B portion work based on the contractor's bid of units of time.

MATERIALS. Not applicable.

CONSTRUCTION DETAILS. There are no construction details for this item.

METHOD OF MEASUREMENT. The method of measurement shall be lump sum. Actual payments-incentive (or deductions-disincentive) made under this item shall be as stated below.

BASIS OF PAYMENT. The amount set forth in the proposal is a fixed price for all bidders. Any bid, other than the specified amount shown in the itemized proposal, will be adjusted by the Department to the fixed price.

The Contractor shall be entitled to payment for this item as follows: To determine the actual lump sum payment-incentive or lump sum deduction-disincentive under this pay item, the number of calendar days actually required to accomplish the identified B portion work will be compared to the number of calendar days declared by the Bidder at the end of the itemized proposal to be necessary for B portion work completion. Should the identified B portion work take longer than the number of calendar days declared by the Bidder (as may be adjusted under the contract terms), the number of calendar days in excess thereof will be multiplied by the daily cost, and that product (lump sum) will be disincentive. Should the calendar days required to substantially complete the identified B portion work be fewer than the number declared (as may be adjusted under the contract terms), the difference will be multiplied by the daily cost, and the product (lump sum) will be paid to the contractor as in incentive.

Incentive payments shall be made for each individual stage or phase of work subject to A+B Bidding upon completion of the B portion of work included in that particular phase or stage. Disincentive assessments shall be made for each individual stage or phase of work subject to A+B Bidding upon reaching the completion date established for each B portion work phase or stage.

Deductions-disincentive made under the terms of this item shall be in addition to any deductions made as Liquidated Damages (only applied to non-B portion work) as indicated in the special note entitled "Provisions for A+B Bidding." Any payments made under this item shall be regarded by the parties to include the cost of all overhead, profit, labor, equipment, supplies, materials, scheduling and management necessary to accomplish the work within the actual number of days taken. The work of the other items in the contract will be measured and paid for separately under their appropriate items of work.

SPECIAL NOTE

OVERTIME FOR B PORTION WORK

The following overtime restrictions apply to both Federally Aided and Non-Federally Aided contracts. Section 110-03 of the Standard Specifications, "OVERTIME DISPENSATION REQUIREMENTS FOR NON-FEDERALLY AIDED CONTRACTS", shall be deleted.

OVERTIME FOR B PORTION WORK

Applications for dispensation for hours submitted by the Contractor to perform the B portion work will be certified by the Department under the following conditions.

1. The application period shall be limited to the duration of the B portion work.
2. The application shall not request more than 60 hours per each work shift. The 60 hour weeks may be either 6 - 10 hour days or 5 - 12 hour days.

Although the Department can not guarantee that the Department of Labor will grant dispensation from restrictions pursuant to the provisions of Article 8 of the New York State Labor Law, it is anticipated that they will act favorably with our certification provided that the contractor is in compliance with Labor Law requirements at the time of application.

OVERTIME FOR ALL OTHER WORK

For work not included in the B portion, applications for dispensation for hours will be reviewed in accordance with the provisions of Article 8 of the New York State Labor Law.

SPECIAL NOTE INCENTIVE/DISINCENTIVE CLAUSE

A. GENERAL.

The contractor will be awarded incentive payments for early completion of I/D work as described in this special note. Late completion of I/D work will result in a disincentive assessment which will be deducted from money due to the contractor. Payments and/or assessments will be made in accordance with item 15698.9394M INCENTIVE PAYMENTS/DISINCENTIVE ASSESSMENTS FOR WORK SUBJECT TO THE SPECIAL NOTE "INCENTIVE/DISINCENTIVE CLAUSE."

The I/D work and incentive payments/disincentive assessments are described in the special note "DESCRIPTION OF I/D WORK." If there are multiple I/D work time periods, each time period will include its own:

- maximum total number of calendar days to perform the work;
- starting and ending dates or events for the I/D period;
- daily cost;
- maximum days for incentive determination; and
- time frames and critical dates, if applicable.

B. DEFINITION OF TERMS.

For this project, the following additional definitions shall apply:

1. Calendar Day - Every day shown on the calendar. (§101-06).
2. Daily Cost - The amount which represents the average daily cost of interference and inconvenience to the highway and/or bridge user excluding engineering inspection costs.
3. Engineering Inspection Costs - The costs to the Department for inspection of the contractor's work.
4. Substantially complete - THIS DEFINITION SHALL APPLY TO ONLY I/D WORK. Each individual I/D work period shall be considered to be substantially complete when: 1) all work requiring lane or shoulder closures or obstruction to normal flow of traffic is completed; 2) traffic is following the lane arrangement as shown on the plans for the finished roadway (or the specified phase(s) of work); and 3) all pavement construction, resurfacing, and traffic control devices shall be in their final position or as called for in the plans for the specified work.

C. EARLY COMPLETION OF I/D WORK

The Contractor will be paid the daily cost specified for each I/D work period for each

calendar day the work is substantially completed before the number of calendar days stated by the Department for that period. The total number of calendar days for incentive payment for each I/D period shall not exceed the maximum number of days specified for incentive calculation in the special note "DESCRIPTION OF I/D WORK."

Incentive payments shall be made for each individual I/D work period upon completion of the work included in the particular I/D period. Incentive payments will be made under Item 15698.9394M.

The Engineer shall be the sole authority in determining when the work is substantially complete.

D. FAILURE TO SUBSTANTIALLY COMPLETE THE I/D WORK IN THE TIME SPECIFIED

Failure to substantially complete any I/D work within the number of consecutive calendar days specified will result in the daily cost specified for that work in the special note "DESCRIPTION OF I/D WORK" being assessed for every calendar day in excess of the number of consecutive calendar days specified, up to the time when the work is substantially complete. **THERE IS NO LIMIT ON THE AMOUNT OF DISINCENTIVE ASSESSMENT.**

The assessments for failure to substantially complete the I/D work will be made separately for each I/D work period upon reaching the completion date established for each I/D work period. Disincentive will be collected under item 15698.9394M.

The Engineer shall be the sole authority in determining when the work is substantially complete.

E. FAILURE TO COMPLETE ALL WORK ON TIME

CONDITION A

If the I/D work is substantially completed prior to the contract completion date stated in the proposal, for each calendar day that any work remains uncompleted after the contract completion date, the appropriate liquidated damages in accordance with §108.03 will be deducted from any monies due to the Contractor. Engineering inspection costs may be added to the liquidated damages in accordance with §108.03 and §108.04.

CONDITION B

If the I/D work is not substantially complete by the contract completion date, the daily cost for the I/D work will be assessed in accordance with D. FAILURE TO SUBSTANTIALLY COMPLETE THE I/D WORK IN THE TIME SPECIFIED. In addition to the daily costs, engineering and inspection costs may also be assessed in

accordance with §108.03 and §108.04. However, liquidated damages will not be assessed during the time the I/D work remains incomplete.

Following the substantial completion of the I/D work, if any other work remains incomplete, the appropriate liquidated damages will be deducted from any money due to the contractor in accordance with §108.03 for each day any work remains incomplete after the substantial completion of the I/D work. Engineering inspection costs will also be assessed along with the liquidated damages in accordance with §108.03 and §108.04.

F. ADJUSTMENTS TO I/D WORK

Adjustments to the I/D time periods will be made based on the critical path method schedule submitted by the contractor in accordance with scheduling provisions found elsewhere in the contract documents. Delays due to extenuating circumstances beyond the control of the Contractor, as provided in section §108-04, will be considered when making time related adjustments. Adjustments will be separately made for each phase/stage of work subject to I/D provisions.

15698.9394M INCENTIVE PAYMENTS/DISINCENTIVE ASSESSMENTS FOR WORK SUBJECT TO THE SPECIAL NOTE "INCENTIVE/DISINCENTIVE CLAUSE".

DESCRIPTION. There is no physical work to be accomplished under this item. This item will enable the Department to make incentive payments to (or disincentive assessments against) the Contractor for early substantial completion (or late completion) of work included in the special note titled "Incentive/Disincentive Clause" based on the time or times specified in that special note.

MATERIALS. Not applicable.

CONSTRUCTION DETAILS. There are no construction details for this item.

METHOD OF MEASUREMENT. The method of measurement shall be lump sum. Actual payments-incentive (or deductions-disincentive) made under this item shall be as stated below.

BASIS OF PAYMENT. The amount set forth in the proposal is a fixed price for all bidders. Any bid, other than the specified amount shown in the itemized proposal, will be adjusted by the Department to the fixed price.

The Contractor shall be entitled to payment for this item as follows: To determine the actual lump sum payment-incentive or lump sum deduction-disincentive under this pay item, the number of calendar days actually required to accomplish the work included in the Incentive/Disincentive Clause will be compared to the number of calendar days specified for the same work in that special note. Should the identified work take longer than the number of calendar days specified (as may be adjusted under the contract terms), the number of calendar days in excess thereof will be multiplied by the daily cost, and that product (lump sum) will be disincentive. Should the calendar days required to substantially complete the identified work be fewer than the number specified (as may be adjusted under the contract terms), the difference will be multiplied by the daily cost, and the product (lump sum) will be paid to the contractor as incentive.

Incentive payments shall be made for each individual I/D work period upon completion of the work included in the particular I/D period. Disincentive assessments shall be made separately for each I/D work period upon reaching the completion date established for each I/D work period.

Deductions-disincentive made under the terms of this item shall be in addition to any deductions made as Liquidated Damages (only applied to non-I/D work) as indicated in the special note entitled "Incentive/Disincentive Clause". Any payments made under this item shall be regarded by the parties to include the cost of all overhead, profit, labor, equipment, supplies, materials, scheduling and management necessary to accomplish the work within the actual number of days taken. The work of the other items in the contract will be measured and paid for separately under their appropriate items of work.

SPECIAL NOTE

OVERTIME FOR I/D WORK

The following overtime restrictions apply to both Federally Aided and Non-Federally Aided contracts. Section 110-03 of the Standard Specifications, "OVERTIME DISPENSATION REQUIREMENTS FOR NON-FEDERALLY AIDED CONTRACTS", shall be deleted.

OVERTIME FOR I/D WORK

Applications for dispensation for hours submitted by the Contractor to perform the I/D work will be certified by the Department under the following conditions.

1. The application period shall be limited to the duration of the I/D work.
2. The application shall not request more than 60 hours per each work shift. The 60 hour weeks may be either 6 - 10 hour days or 5 - 12 hour days.

Although the Department can not guarantee that the Department of Labor will grant dispensation from restrictions pursuant to the provisions of Article 8 of the New York State Labor Law, it is anticipated that they will act favorably with our certification provided that the contractor is in compliance with Labor Law requirements at the time of application.

OVERTIME FOR ALL OTHER WORK

For work not included in the I/D phase(s), applications for dispensation for hours will be reviewed in accordance with the provisions of Article 8 of the New York State Labor Law.

SPECIAL NOTE: PROVISIONS FOR LANE RENTAL

CONTRACT NO. D _____

A. MODIFICATIONS TO STANDARD SPECIFICATION PROVISIONS

Under §103-04 BONDS, delete C. Amount of Bonds in its entirety and substitute

C. Amount of Bonds. The amount of the Faithful Performance Bond and Labor and Material Bond shall be 100% of the amount of the contract price less the amount bid for lane rental under item 15619.0195M as applicable to the contract.

B. GENERAL

The Contractor will be assessed an hourly rental charge for each lane and/or shoulder closure or obstruction either from the time of the Notice to Proceed until such time the project is complete.

OR

for the duration of a phase or phases of the project as specified in these Provisions.

During the performance of work to which lane rental applies, the Contractor shall keep open at all times the minimum number of lanes specified elsewhere in these Provisions.

Payments and assessments will be made under 15619.0195M - LANE RENTAL PAYMENTS AND ASSESSMENTS - HOURLY BASIS (LUMP SUM)

C. DEFINITIONS

For the purposes of these Special Provisions the following definitions apply:

1. Hour - Any continuous 60-minute period or portion of a continuous 60-minute period beginning at that point when a lane and/or shoulder is closed or obstructed by the Contractor's operation.
2. Lane Closure - For the purpose of assessing rental charges, lane closure shall mean denying any lane or any portion of a lane to traffic.
3. Shoulder Closure - For the purpose of assessing lane rental charges, shoulder closure means preventing vehicles from using a shoulder or any portion of shoulder for its intended legal use.
4. Rental Charge - The amount, as shown in the proposal, which represents the hourly cost of interference and inconvenience to the road user for each lane and/or shoulder closure or obstruction.

5. Obstruction - When the Contractor's operations have resulted in the useable lane width of the travelway or shoulder to be less than that specified in the contract documents.
6. Engineering Inspection Costs - The costs to the Department for inspection of the Contractor's work.

D. LANE RENTAL WORK

This contract contains a Lane Rental Procedure under which the Contractor is assessed a rental charge for each hour or fraction thereof for each lane and/or shoulder closure or obstruction on the roadways listed in this note.

To allow application of Lane Rental to more than one roadway requiring different restrictions in the performance of the work and having different rental charges and timing requirements, the following items are listed separately for each roadway to which lane rental applies:

- Roadway name and limits
- Rental charges(\$ per hour per lane/shoulder)
- Work to which Lane Rental applies (i.e., M&PT setup, paving operations, pavement striping, joint repair, etc.)
- Conditions applicable during the performance of work to which Lane Rental applies (i.e., minimum number of lanes open, minimum lane/shoulder width, work hour restrictions, liquidated damages for nonclosure periods, etc.)

Roadways to which lane rental applies and the above related information are described separately in the special note" DESCRIPTION OF LANE RENTAL WORK".

Payments and assessments for lane rental charges will be made as described in special Specification for Item 15619.0195M Lane Rental Payments and Assessments-Hourly Basis.

E. COUNTING LANE AND/OR SHOULDER CLOSURES AND/OR OBSTRUCTIONS.

For the purpose of assessing lane rental charges, the number of lane and/or shoulder closures and/or obstructions shall be determined as follows:

The lane and/or shoulder closures and/or obstructions shown on the contract plans shall be put in place where and as shown and counted.

The number of lane and/or shoulder closures and/or obstructions not shown on the contract plans but allowed by the contract documents shall be determined by counting the number of lane and/or shoulder locations subject to closure and/or obstruction as defined above. For the purpose of counting closures/obstructions not shown on the contract plans, closures/obstructions occurring in the same lane but located a distance of **one-half** mile or greater apart shall be considered separate closures/obstructions and the rental charges applied for each separately as if they occurred on different lanes.

The distance between closures shall be measured from the end of the taper of one closure to the beginning of the taper for the following closure. The distance between obstruction shall be measured from the midpoint of obstruction to the midpoint of the next.

F. PREPARATION OF PROPOSAL.

As specified in Section D of these Special Provisions, the contract includes a Lane Rental Provision on an hourly basis and the bidder must enter a bid for Item 15619.0195M. Item 15619.0195M Lane Rental Payments and Assessments- Hourly Basis is considered to be an item of the contract and MUST be bid. If the Contractor leaves this item blank, the Department will consider the bid nonresponsive. NO NEGATIVE AMOUNT WILL BE PERMITTED FOR THIS ITEM.

Item 15619.0195M has been included in the contract to allow bidders to account for the lane rental charges that will be made in accordance with Section D LANE RENTAL WORK of this special note. Therefore, the amount bid for this item should be based on the Bidders' estimate of rental hours and the amount charged for each rental hour specified in Section D of this special note and taking into account the number of closures/obstructions that will be counted as specified in E. COUNTING LANE AND/OR SHOULDER CLOSURES AND/OR OBSTRUCTIONS.

The amount of Lane Rental charges that exceed the bid amount included in this item will be subtracted from other payments due the Contractor. The amount bid for this item will affect the determination of the lowest bidder. The Contractor should not spread its anticipated Lane Rental payments to the Department within other items of the contract, as unbalancing may occur and the proposal may be rejected.

G. ADJUSTMENTS TO WORK THAT AFFECTS LANE RENTAL.

When work is adjusted that affects Lane Rental, particularly under §109-16, consideration will be given to modifying the Lane Rental bid amount for the performance of this portion of work. When a contract extension of time is granted under §108-04, consideration will be given to modifying the Lane Rental bid amount for the performance of work to which Lane Rental applies.

SPECIAL NOTE

DESCRIPTION OF LANE RENTAL WORK

Roadway Name and Limits Within Which Lane Rental Applies:

Name:

Limits:

The rental charge to be assessed for each lane and/or shoulder closure or obstruction per direction of traffic is as follows:

<u>Hourly Rental Charge</u>			
Closure and/or Obstruction	XAM to XAM	XPM to XPM	All other hours of the day

one lane			
one shoulder			
one lane and shoulder			
two lanes			
two lanes and shoulder			

Description of Work To Which Lane Rental Applies

Conditions Applicable During The Performance Of Work To Which Lane Rental Applies

**15619.0195M LANE RENTAL PAYMENTS AND ASSESSMENTS - HOURLY BASIS
(LUMP SUM)**

DESCRIPTION. There is no physical work to be accomplished under this item. Instead this item will enable the Department to implement Lane Rental for this project. Further it will enable the Department to make payments toward the amount bid for this item and to make assessments for Lane Rental charges in the amount(s) specified in the Special Note "Provisions For Lane Rental".

MATERIALS. Not applicable

CONSTRUCTION DETAILS. There no are construction details for this item.

METHOD OF MEASUREMENT. The method of measurement shall be Lane Rental Hours (measured in 15 minute increments) for assessments of Lane Rental charges. Payment toward the bid amount shall be on a Lump Sum Basis.

BASIS OF PAYMENTS AND ASSESSMENTS:

To determine payments and assessments the following procedure shall be used:

A tally of cumulative lane rental charges shall be kept and subtracted each month from the **original lump sum bid** for this item. This process shall continue until

- a) the cumulative rental charges exceed the original lump sum bid
- or**
- b) the project ends.

The rental charges will be determined by multiplying the number of rental hours by the appropriate rental charge for each closure and/or obstruction specified in the contract and summing the products. For the purpose of determining rental charges a fraction of each 15 minute increment shall be considered a whole 15 minute increment.

Assessments. If, for any monthly estimate or final estimate, the original lump sum bid becomes less than the lane rental charges, the additional cumulative lane rental charges will be made against moneys otherwise due the contractor for other items of work either in the monthly estimate or final estimate. However, if the cumulative lane rental charges do not exceed the original lump sum bid for this item, no deduction will be made from monthly estimates for lane rental charges.

Payments. If at the end of the project or phase of the project to which lane rental applies the original lump sum bid for this item is greater than the total lane rental charges, the Contractor will be paid the difference obtained by subtracting the total lane rental charges from the lump sum bid for this item.

SPECIAL NOTE

OVERTIME FOR LANE RENTAL WORK

The following overtime restrictions apply to both Federally Aided and Non-Federally Aided contracts. Section 110-03 of the Standard Specifications, "OVERTIME DISPENSATION REQUIREMENTS FOR NON-FEDERALLY AIDED CONTRACTS", shall be deleted.

OVERTIME FOR LANE RENTAL WORK

Applications for dispensation for hours submitted by the Contractor to perform the Lane Rental work will be certified by the Department under the following conditions.

1. The application period shall be limited to the duration of the Lane rental work.
2. The application shall not request more than 60 hours per each work shift. The 60 hour weeks may be either 6 - 10 hour days or 5 - 12 hour days.

Although the Department can not guarantee that the Department of Labor will grant dispensation from restrictions pursuant to the provisions of Article 8 of the New York State Labor Law, it is anticipated that they will act favorably with our certification provided that the contractor is in compliance with Labor Law requirements at the time of application.

OVERTIME FOR ALL OTHER WORK

For work not performed under the Lane Rental provisions, applications for dispensation for hours will be reviewed in accordance with the provisions of Article 8 of the New York State Labor Law.

EXHIBITS

SAMPLE SPECIAL NOTE
DESCRIPTION OF B PORTION WORK
(Tied to an event)

The B portion work includes all work required to remove the existing bridge and construct the new bridge and highway approaches. The major bridge work elements include excavations, bridge abutments, piers, girders, deck, closure pours, transverse grooving, bridge rail, bridge joints, curb, utilities and approach slabs. The major highway approach work elements include excavations, embankments, drainage system, pavements (including the top course), shoulders, curbing, utilities, signing, signal systems, guiderail, final pavement markings, and removal of all barricades and temporary pavement markings.

Landscaping and turf establishment items are not included in this operation.

Starting date or event for determining the number of consecutive calendar days for the performance of the B portion work:

The counting of consecutive calendar days for the B portion work will begin when the existing bridge is closed to traffic after implementation of the detour plan as shown on drawing X.

Ending date or event for determining the number of consecutive calendar days for the performance of the B portion work:

The counting of consecutive calendar days for the B portion work will end when the new bridge and approaches are complete and open to traffic.

Data for Bid Preparation

Maximum number of consecutive calendar days that can be bid: **200 days**.

Daily cost for incentive/disincentive: **\$3,000**.

Maximum number of days for incentive payment is **20 days**.

Conditions Applicable During Performance of the B portion work:

All B portion work must be completed by _____. If the B portion work is not completed by this date, the disincentive assessment period will begin the following calendar day. If the B portion work is completed after this date, the contractor will not be eligible for any incentive payments, regardless of the total number of consecutive days required to complete the B portion work. ”

SAMPLE SPECIAL NOTE

DESCRIPTION OF B PORTION WORK

(Tied to Award Notification)

The B portion work will include the reconstruction of Route Y between the intersection with A Boulevard and C Square, inclusive of these intersections. The B portion work includes all work required to reconstruct Route Y as specified in the contract plans. The major highway work elements include excavations, embankments, drainage systems, pavements (including the top course), curbing, utilities, water and sanitary line relocations, signal systems, sidewalks, signing, final pavement markings, and removal of all temporary pavement markings.

Landscaping and turf establishment items are not included in this operation.

Starting date or event for determining the number of consecutive calendar days for the performance of the B portion work:

The counting of consecutive calendar days for the B portion work shall begin 10 calendar days after the date shown on the notification of contract award, CONR 349c or CONR 350c as applicable to the contract.

Ending date or event for determining the number of consecutive calendar days for the performance of the B portion work:

The B portion work time period of consecutive calendar days will end when all work as described below has been completed and new highway segment on Route Y between A Boulevard and C Square has been opened to safe traffic operation.

Data for Bid Preparation

Maximum number of consecutive calendar days that can be bid: **160 days**

Maximum number of days for incentive payment: **16 days**

Daily Cost for incentive/disincentive: **\$3000**

Conditions Applicable During Performance of the B portion work:

Refer to drawing no. MPT-3 for work hour restrictions.

SAMPLE SPECIAL NOTE

DESCRIPTION OF B PORTION WORK

(Multiple B Portions)

The B portion work shall consist of the replacement of two bridges on I-XX and reconstruction of Route Y between A Boulevard and C Square delineated below, starting with the closure of the NB I-XX bridge as designated in Phase I of the Maintenance and Protection of Traffic Plan

The B portion work will be bid in two phases. Phase I of the B portion work will consist of the replacement of the NB and SB bridges on I-XX. Phase II of the B portion work will consist of the reconstruction of Route Y from the intersection with A Boulevard to the intersection with C Square, inclusively.

PHASE I - B PORTION OF WORK

Phase I will include the closing and complete reconstruction of the NB and SB bridges on I-XX. The B portion work includes all work required to remove the existing bridges and construct the new bridges and highway approaches. The major bridge work elements include excavations, bridge abutments, piers, girders, deck, closure pours, transverse grooving, bridge rail, bridge joints, curb, utilities and approach slabs. The major highway approach work elements include excavations, embankments, drainage system, pavements (including the top course), shoulders, curbing, utilities, signing, guiderail, final pavement markings, and removal of all barricades, and temporary pavement markings.

Landscaping and turf establishment items are not included in this operation.

Starting date or event for determining the number of consecutive calendar days for the performance of the B portion work:

The counting of consecutive calendar days for the Phase I B portion of work shall start when the contractor institutes the Bridge Stage I Traffic Control Plan by closing the NB lanes to traffic and routing all traffic (NB and SB) on the existing SB bridge, as specified in the Maintenance and Protection of Traffic Plans.

Ending date or event for determining the number of consecutive calendar days for the performance of the B portion work:

The Phase I B portion work time period of consecutive calendar days will end when both bridges on I-XX have been completed in accordance with the plans and proposal and are open to safe traffic operation.

Data for Bid Preparation

Maximum number of consecutive calendar days that can be bid: **300 days**

Maximum number of days for incentive payment is: **30 days**

Daily Cost for incentive/disincentive: **\$3000**

PHASE II - B PORTION OF WORK

Phase II will include the reconstruction of Route Y between the intersection with A Boulevard and C Square, inclusive of these intersections. The B portion work includes all work required to reconstruct Route Y as specified in the contract plans. The major highway work elements include excavations, embankments, drainage systems, pavements (including the top course), curbing, utilities, water and sanitary line relocations, signal systems, sidewalks, signing, final pavement markings, and removal of all temporary pavement markings.

Landscaping and turf establishment items are not included in this operation.

Starting date or event for determining the number of consecutive calendar days for the performance of the Phase II - B portion work:

The counting of consecutive calendar days for the Phase II B portion of work shall start when the contractor closes a lane to perform any pavement milling, excavation, trenching or other pavement reconstruction operations within the roadway on Route Y between its intersections with A Boulevard and C Square, inclusive of the intersections.

Ending date or event for determining the number of consecutive calendar days for the performance of the Phase II - B portion work:

The Phase II B portion work time period of consecutive calendar days will end when all work as described below has been completed and new highway segment on Route Y between A Boulevard and C Square has been opened to safe traffic operation.

Data for Bid Preparation

Maximum number of consecutive calendar days that can be bid: **60 days**

Maximum number of days for incentive payments: **6 days**

Daily Cost for incentive/disincentive: **\$3000**

Conditions Applicable During Performance of the Phase II - B portion work:

Refer to drawing no. MPT-3 for work hour restrictions.

SAMPLE SPECIAL NOTE

DESCRIPTION OF LANE RENTAL WORK

Roadway Name and Limits Within Which Lane Rental Applies:

Name: Route Y

Limits: A Boulevard and C Square

The rental charge to be assessed for each lane and/or shoulder closure or obstruction per direction of traffic is as follows:

Closure and/or Obstruction	<u>Hourly Rental Charge</u>		
	7AM to 9AM	4PM to 6PM	All other hours of the day
one lane	\$100	\$100	\$0
one shoulder	\$100	\$100	\$0
one lane and shoulder	\$100	\$100	\$0
two lanes			
two lanes and shoulder			

Description of Work To Which Lane Rental Applies

Lane rental charges will be assessed for lane closures required on Route Y to rehabilitate the pavement in accordance with the contract plans including M&PT setup, pavement joint repair, drainage structure repair, asphalt pavement overlay, and temporary and final striping.

Conditions Applicable During The Performance Of Work To Which Lane Rental Applies

One lane in each direction must be open to traffic at all times. Refer to drawing no. MPT-3 for work hour restrictions.